

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM L. BIRD,
Petitioner,

No. C 05-02454 MJJ

ORDER TO SHOW CAUSE

v.

JILL BROWN, Warden,
Respondent.

Petitioner William L. Bird ("Petitioner") is currently serving a term of eight years at San Quentin State Prison in San Quentin, California, based on a state court conviction for second degree burglary and grand theft of personal property. Petitioner has filed a petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254.

Petitioner challenged his conviction and sentence through to the California Supreme Court, without success. Petitioner now seeks federal *habeas corpus* relief, claiming that the trial court's determination that Petitioner's prior conviction was a "serious felony" subjecting him to a longer sentence violated his Sixth and Fourteenth Amendment rights. Petitioner claims that the court made a critical factual finding on an element of that prior crime that was never tried by a jury.

For the foregoing reasons and for good cause shown, it is hereby ordered that:

1. Respondent shall file and serve within sixty (60) days of the issuance of this Order, an answer conforming in all respects with Rule 5 of the Rules Governing Habeas Corpus Cases Under Section 2254, showing cause why a writ of *habeas corpus* should not issue; and

2. If Petitioner wishes to reply to the answer, he must do so by filing and serving a traverse within thirty (30) days of his receipt of Respondent's answer.

IT IS SO ORDERED.



Dated: June __29__, 2005

/s/
MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE